

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CHARLES HANS ZIZI,

Plaintiff,

vs.

PNC BANK and CHEXSYSTEMS,

Defendants.
-----X

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: Index No. 1:13-cv-07212-PKC-RML
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**AFFIRMATION IN SUPPORT OF
DEFENDANT CHEXSYSTEMS'S
MOTION TO DISMISS**

I, Aleksander Powietrzynski, pursuant to 28 U.S.C. § 1746(2), state:

1. I am an associate of the law firm of Winston & Winston, P.C., counsel for Defendant Chex Systems, Inc., a/k/a ChexSystems ("ChexSystems"). I submit this Affirmation in Support of ChexSystems' motion to dismiss Plaintiff's Complaint dated November 18, 2013 pursuant to Fed. R. Civ. P. 12(b)(6) or for a more definite statement pursuant to Fed. R. Civ. P. 12(e) and automatically dismissing the complaint if a more definite statement is not provided within fourteen (14) days of the date of the Order.
2. I make this affirmation based on my personal knowledge and upon a review of my client's file and other information provided by my client.
3. ChexSystems is a consumer-reporting agency governed by the Fair Credit Reporting Act ("FCRA") 15 U.S.C. § 1681 *et seq.* Member financial institutions, such as PNC, provide account verification information regarding their customers to ChexSystems. ChexSystems gathers this information and upon request provides the account verification information to its member financial institutions in accordance with the FCRA. PNC Bank, N.A., is a member financial institution.
4. ChexSystems maintains a file on Plaintiff in accordance with the FCRA.

5. On or about November 18, 2013, Plaintiff filed a Summons with Endorsed Complaint against Defendants, PNC Bank and ChexSystems in the Civil Court of the City of New York, County of Kings under Index Number CV-065752-13/KI (the "Complaint"). The Endorsed Complaint states, "The nature and the substance of the plaintiff's cause of action is as follows: Financial damages for \$20,000.00 with interest from 03/01/2012; Emotional distress for \$25,000.00 with interest from 03/01/2012." A true and correct copy of the Complaint is attached hereto as Exhibit A.

6. ChexSystems received a copy of the Complaint on or about December 2, 2013 outside of the City of New York. ChexSystems has not had an opportunity to review the affidavit of service to determine whether Defendant ChexSystems was properly served. Pursuant to the Complaint, ChexSystems' answer is due thirty (30) days after proper service outside of the City of New York.

7. On or about December 18, 2013, Defendant, PNC Bank, N.A., removed the action to this Court from the Civil Court of the City of New York pursuant to 28 U.S.C. § 1441 and 1446 ("Removal"). The Removal was conducted before thirty (30) days of any alleged service on the Defendants. Defendant ChexSystems consented to the Removal.

8. Neither this motion nor the prior consent to Removal should be construed as an acceptance or service upon ChexSystems or a waiver of any of ChexSystems' defenses including for lack of personal jurisdiction due to improper service.

9. Defendant ChexSystems respectfully requests an Order dismissing the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) or for an Order for a More Definite Statement pursuant to Fed. R. Civ. P. 12(e) which would automatically dismiss the complaint with prejudice if the a

more definite statement is not provided by Plaintiff within fourteen (14) days of the date of the Order and for such other and further relief as this Court may deem just and proper.

10. No previous relief has been requested in this action by Defendant ChexSystems from this or any other Court except ChexSystems consented to the Removal.

I hereby state under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: December 26, 2013
New York, New York

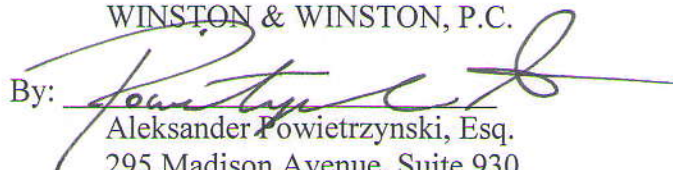
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Exhibit A

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Civil Court of the City of New York
County of Kings

Index Number: CV-065752-13/KI

Charles Hans Zizi
Plaintiff(s)
-against-
PNC Bank; Chexsystems
Defendant(s)

**SUMMONS WITH ENDORSED
COMPLAINT**
BASIS OF VENUE: Plaintiff's residence

Plaintiff's Residence Address (s):
Charles Hans Zizi
220 Greene Avenue
Brooklyn, New York 11238

To the named defendant (s)
PNC Bank (Def), at 500 Jefferson Street, Louisville, Kentucky 40202
Chexsystems (Def), at 7805 Hudson Road, Suite 100, Attn: Consumer Services, Woodbury, Minnesota
55125-1595

YOU ARE HEREBY SUMMONED to appear in the Civil Court of the City of New York, County of Kings at the office of the Clerk of the said Court at 141 Livingston Street in the County of Kings, City and State of New York, within the time provided by law as noted below and to file your answer to the (endorsed summons) (annexed complaint) * with the Clerk; upon your failure to answer, judgment will be taken against you for the total sum of \$45,000.00 and interest as detailed below.
Plaintiff's work sheet may be attached for additional information if deemed necessary by the clerk.

Date: November 18, 2013

Carol Alt, Chief Clerk

ENDORSED COMPLAINT

The nature and the substance of the plaintiff's cause of action is as follows: **Financial damages for \$20,000.00 with interest from 03/01/2012; Emotional distress for \$25,000.00 with interest from 03/01/2012**

****NOTE TO THE DEFENDANT***

A) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or

B) If the summons is served by delivery to any person other than you personally, or is served outside the City of New York, or by publication, or by any means other than personal delivery to you within the City of New York, you are allowed THIRTY days after the proof of service thereof is filed with the Clerk of this Court within which to appear and answer.

C) Following CPLR 321(a) corporations must be represented by an attorney.

**** NOTE TO THE SERVER OF THE SUMMONS***

The person who serves the summons should complete the Affidavit of Service and shall file it in the Clerk's Office in the county where the action is brought.

PLAINTIFF'S CERTIFICATION
(See 22NYCRR, Section 130-1.1a)

SIGN NAME: 
PRINT NAME: Charles Hans Zizi

For Information, answer forms and to track court dates, go to WWW.NYCOURTS.GOV/NYCCIVIL